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Supreme Court of the United States

..... TERM, 197....

No. 73-1792

JIMMY B. WILLIAMS, PETITIONER,

versus

STATE OF SOUTH CAROLINA, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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STATE OF SOUTH CAROLINA, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of South Carolina in the above case.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of the State of South Carolina on the .... page of the Appendix.

JURISDICTION

The judgment of the Court of General Sessions of Fairfield County South Carolina was affirmed by the Supreme Court of the State of South Carolina on February

11, 1974. Rehearing was denied March 4, 1974. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3), petitioner having asserted in the Courts below, rights, privileges and immunities conferred by the Constitution of the United States of America.

QUESTION INVOLVED

Whether due process of law and the right to be secure against unreasonable search and seizure, as guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution was denied petitioner by the receipt into evidence of contraband obtained from petitioner's residence by police officers through an invalid and improper search warrant.

STATEMENT OF CASE

This matter involves a trial in the Court of General Sessions for Fairfield County South Carolina in which the petitioner was charged with possession of a large quantity of hashish and/or bricks of marijuana. The sole question involved is the sufficiency and validity of the affidavit supporting a search warrant and the validity of the search warrant. It is the contention of the petitioner that the affidavit lacked probable cause upon its face; that the search warrant was therefore improvidently and illegally issued; and that the evidence seized pursuant to the authority of the search warrant was improperly admitted into evidence upon the trial. At an early point during the trial, the question of the sufficiency of the affidavit and the validity of the search warrant was raised by the petitioner, and the trial judge held a parenthetic evidentiary hearing to determine the question. The petitioner would show that through this evidentiary hearing, and upon the face of the affidavit itself, there was a total failure of sufficient probable cause to justify the issuance of the search warrant and

it then follows that the contraband seized was improperly admitted into evidence.

The matter was submitted to the jury and the petitioner was found guilty. He was sentenced to serve a term of three (3) years and the appropriate appeal was taken to the Supreme Court of the State of South Carolina, wherein the lower court's ruling was affirmed. A Petition for Rehearing was denied.

REASON FOR GRANTING THE WRIT

The petitioner was denied due process of law and was subjected to an illegal search and seizure in violation of the rights guaranteed by the Fourth and Fourteenth Amendments of the Constitution of the United States, by the receipt of evidence seized pursuant to an unlawful and illegal search warrant.

An officer of the State appeared before a recently elected lay magistrate (one with no legal training) and presented an affidavit in which he requested the issuance of a search warrant. The body of the affidavit is, as follows:

> The undersigned being duly sworn deposes and says:
>
> That he has reliable information and reasonable cause to believe that **Jimmy Williams, Jaye Hayes** possesses **marijuana, a controlled substance,** in violation of the possessed property is located or concealed in **Route 2, Box 193, Ridgeway, S. C. a large two-story unpainted house between Willie Raines at Simpson,** in Fairfield County, State of South Carolina, and **C. Less Spirwell** on or near **just off Hwy. 34 at Simpson.**
>
> The facts which establish the reasonable grounds for issuance of a search warrant are as follows: **That confidential and reliable source of information tells Lt. T. E. Clark, Richland County Sheriff's Narcotic Squad that there is now a large quantity of marijuana at the above described location. The informant knows this because the person who possessed this marijuana told**

the informant about it and where he had it stored. The above mentioned persons are also known to Lt. Clark as dealers of marijuana. The informant has talked with the subject who owns this marijuana and been told where it was within the past three days.

Pursuant to the affidavit the magistrate issued a search warrant, empowering the police officer to search the premises of the petitioner. This search warrant was based upon authority issued by Section 17-271 of the 1962 Code of Laws for the State of South Carolina, the pertinent part of which is as follows:

> "If the magistrate—is satisfied that the grounds for the application exist or **that there is probable cause to believe that they exist,** he shall issue a warrant—" (Emphasis added.)

Upon the trial of the matter, the officer was asked whether or not the magistrate had examined him on the sufficiency of the affidavit and whether or not the magistrate tested the reliability of the informant. The questions asked of the officer and his answers are, as follows:

> "Q. What questions did the magistrate ask you about the matter?
>
> A. I don't recall any specific questions. I made the statement to him that I just made here.
>
> Q. Did he cross examine you or examine you on this statement you made?
>
> A. I believe he asked me if I knew who lived in the house?
>
> Q. And that was it?
>
> A. As far as I remember, yes, sir.
>
> Q. Now, the reliability of the informer, you told the Court that you had secured one arrest based upon information reported by this informer?
>
> A. Yes.
>
> Q. You have secured no conviction?
>
> A. No, sir, no conviction at this point.

Q. Had you had any other dealings other than that with this informer that resulted in convictions?

A. That was the only one, no convictions.

Q. Was the information the sole information you have expressed in this affidavit for a search warrant?

A. Yes, sir.

Q. That someone had told him or had talked to him you say the informer knows this because the person who possesses this marijuana told the informer about it and where he had it stored, is that correct?

A. Yes, sir."

Subsequently, the State, in the parenthetic evidentiary hearing, placed on the stand the magistrate, and he was examined as follows:

"Q. Lt. Clark has told us, I know you were not here, that he told you only, that he explained that he had made an arrest previously based upon information from this same informant; that was about the extent of what he told you?

A. Yes, sir.

Q. Did you independently inquire as to any other facts concerning the reliability of this informant?

A. I asked him, I say you must have a good lead. It kinda excited me about it; how in the world did they find out about it somewhere up here in the country.

Q. So, judge, what you were doing then, you were taking Lt. Clark's word for the reliability of the informant based upon one prior arrest that he had made relying on this informant, is that what it amounts to?

A. Really, that's true.

Q. Did you ask any other independent questions other than that about who the informant was first, did you ask who he was?

A. No, sir.

Q. Did you ask his age or occupation?

A. No, sir.

Q. Did you ask how he had acquired the information?

A. He told me it was voluntarily told to him.

Q. He didn't go into any details other than that?
A. No, sir."

The Fourth Amendment to the Constitution of the United States and Article 1, Section 16 of the Constitution of the State of South Carolina are identical and are, as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

It might be well to consider first the pertinent federal decisions and probably the leading case would be that of *Aguilar v. Texas* (1964), 378 U. S. 108. In this matter, the United States Supreme Court struck down a state search warrant issued on the basis of an affidavit which, in substance was:

> "Affiant has received reliable information from a credible person and do believe that—drugs—are on the described premises."

The Court set down a two (2) pronged test for establishing probable cause. The affiant must provide the magistrate with underlying circumstances showing the informant to be credible and his information reliable. These inquiries are separate and distinct, and both must be separately satisfied before probable cause is shown.

Spinelli v. U. S., 394 U. S. 410, 89 S. Ct. 584 defined with more authority the principle set forth in *Aguilar*. In substance they added to *Aguilar* by setting forth that there must be independent corroboration of the tip or informant's information so as to implement the first two (2) prongs of *Aguilar*. The magistrate must be the neutral detached person to independently arrive at the probable

cause and he must never rely upon the bare assertion of the affiant in determining probable cause. In determining credibility the court held that though the affiant swore that his confidant was reliable, he offered the magistrate no reason in support of this conclusion. The bare credibility or reliability provided in the instant case is the supporting fact of one arrest and no conviction by the alleged informant. We call the Court's attention to the statements of both Clark and Magistrate Peake in support of this.

The applicable proposition of law as it pertains to the instant case is most aptly set forth in *Spinelli* (*supra*):

> "The detail provided by the informant in *Draper United States,* provides a suitable benchmark. While Hereford, the FBI's informer in that case, did not state the way in which he had obtained his information, he reported that Draper had gone to Chicago the day before by train and that he would return to Denver by train with three ounces of herion on one of two specified mornings. Moreover, Hereford went on to describe, with minute particularity, the clothes that Draper would be wearing upon his arrival at the Denver Station. A magistrate, when confronted with such detail, could reasonably infer that the informant had gained his information in a reliable way. Such an inference cannot be made in the present case."

The affidavit must stand or fall on the matter contained in the affidavit and cannot be bolstered or added to by subsequent testimony. This matter was before the Court in *Giordenello v. U. S.* 357 U. S. 480:

> "If an affidavit is the only matter presented to the issuing magistrate, as in this case, the warrant must stand or fall solely on the contents of the affidavit. What is subsequently adduced at a hearing on a motion to suppress, therefore, cannot be used by the trial court to augment an otherwise defective affidavit. But if the hearing discloses matters which discredit or impeach the assertions in an affidavit, these must be con-

sidered by the trial court in determining whether probable cause in fact existed."

In *Aguilar v. Texas*, 378 U. S. 108, the Court held:

"Although an affidavit may be based on hearsay information and need not reflect the direct personal observation of the affiant, * * * the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, * * * "credible" or that his information "reliable".'

SUMMARY

The question herein presented is of obvious importance to the administration of justice and the conduct of criminal investigation. The record of this case clearly shows a violation of due process in several areas of the proceedings and these departures from due process go to the very heart of the fundamental foundation required in the conduct of criminal justice. The decision of the Court below is believed to be erroneous. The petitioner has asserted in the Courts below, and is asserting here, rights guaranteed to the petitioner by the Constitution of the United States of America and is of the opinion that he has shown violations of these rights. It is obvious from the record that the petitioner would not have been convicted, had illegally seized evidence not been admitted into evidence. It is also obvious that this evidence was secured by the state police in violation of the rights and guarantees afforded petitioner by the United States Constitution. Unless *Certiorari* is granted by this Court, the rights of petitioner will stand as violated and this can only be remedied by this Court applying its standard of measurement to the illegal evidence used against him in the courts below. The establishment of uniform requirements of due process to

insure proper adjudication of criminal justice in state criminal trials warrants remedial action by this Court.

CONCLUSION

For the foregoing reason, this Petition for Writ of Certiorari should be granted.

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May 22, 1974.
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